

REMARKS

Instant claims 1-7, and 10-15 stand pending in the instant Application. The instant claims 10-14 are withdrawn by the Examiner. No new matter is added by the present amendment.

Instant claim 16 has been amended solely to avoid any written description issue.

Support for new claim 18 may be found, for example, in the instant specification at page 5, lines 9-11.

Personal Interview with the Examiner

Applicants' attorney thanks Examiner Ronesi for extending the courtesy of a telephonic interview on 20 May 2008. The Interview Summary accurately states: "Discussed scope and nature of composition that would befit patentable subject matter."

The Applicants wish to thank both Examiner Ronesi and the examiner's supervisor, Vasu Jagannathan, for their comments during the telephonic interview.

Claim Rejections: 35 U.S.C. §112

Claims 16 and 17 stand rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. In the Office Action, the Examiner has stated that "With respect to claim 16, ...Example 1 on page 17 of the specification only provides support for an initial amount 0.078 wt % and not for 0.08 wt % during the first 10 wt % of monomer conversion." Applicants have accordingly amended claim 16 to recite the amount 0.078 wt % for reasons of avoiding indefiniteness only.

With respect to claim 17, during the telephonic interview of May 20, 2008, the Examiner agreed that the specification does indeed provide support for an initial amount of from 0.03% to less than half of said initiator, based on dry polymer weight. The Office Action had indicated "In claim 17, the amount of initiator present during the first 10 wt % monomer conversion is based on the total amount of initiator and not on the amount of dry polymer weight." It was agreed that the claim language is sufficiently clear, and that the total amount of initiator is based on the amount of dry polymer weight.

Claim Rejections: 35 U.S.C. §102(b)

Claims 2-5, 7 and 17 stand rejected under 35 U.S.C. §102(b) as being anticipated by Friel (U.S. 5,731,377), hereafter "Friel".

The rejection has cited case law to the effect that "even though the product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself". However, the instantly recited process begets a different polymer than a polymer made from the same monomer mixture by the process of Friel.

The rejection, to be proper, must provide evidence that the product produced in Friel is the same as the product produced by the current inventive process and has failed to do this. Applicants have already produced data showing that the products are not the same. The §102(b) rejection is, therefore, clearly improper and should be withdrawn.

Claim Rejections: 35 U.S.C. §103(a)

Claims 2-7 and 17 stand rejected under 35 U.S.C. §103(a) as obvious over Friel. Claims 1, 3-7, and 16 stand rejected under 35 U.S.C. §103(a) as obvious over Friel in view of Ishikawa (US 4,325,856). Claims 15 stands rejected under 35 U.S.C. §103(a) as obvious over Friel in view of Ishikawa (US 4,325,856) and further in view of Bricker (US 5,502,089).

Applicants original specification shows evidence of unexpected results for the products of the product-by-process claims, and thus, the product resulting from the inventive process is not obvious with respect to Friel. The §103(a) rejection should be withdrawn.

Applicants have filed a Request for Continued Examination in order to have the opportunity to gather further data in support of unobviousness.

New claim 18:

Friel fails to disclose, teach or suggest any of the instantly recited sulfoethyl methacrylate and the phosphoethyl methacrylate, or any motivation to include the same in a polymer or emulsion thereof. Accordingly, instant claim 18 is allowable over Friel.

Reconsideration of Restriction Requirement:

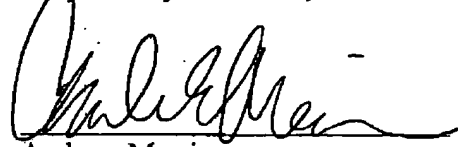
The original application included claims 1-9. The applicants had cancelled claims 8 and 9, and submitted new claims 10-14. Claims 10-14 were withdrawn from consideration by the Examiner as being directed to a process of making the composition of instant claims 1-7. However, a composition and the method of making the same are considered to be one and the same invention. See *In re Ochiai*, 71 F.3d 1565 (Fed. Cir. 1995). Applicants have insured that instant Claim 10 includes all of the limitations of instant Claim 2. Accordingly, Applicants hereby respectfully request the rejoinder of Group I, claims 1-7, and Group II, claims 10-14 upon an indication of the allowability of the instant composition claims. See MPEP 8.21.04, 1st two paragraphs.

CONCLUSION

Based on the foregoing, the instant claims are believed to be in condition for allowance. Applicants' attorney thanks the Examiner for the time taken to review this response and Declaration.

Concurrently herewith, Applicants have filed a Request for Continued Examination and the requisite fee.

Respectfully submitted,



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